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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Policies and Rules Concerning	)	
Unauthorized Changes in Consumers'	)	CC Docket No. 94-129
Long Distance Carriers	)	

PETITION FOR RECONSIDERATION

SPRINT COMMUNICATIONS COMPANY

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SUMMARY

Sprint seeks reconsideration of the extension of verification requirements to PIC changes resulting from customer-initiated calls to an IXC. Such calls are an important source of new customers and have markedly different characteristics from telemarketing calls. Customer-initiated calls are made by consumers who are focused on their long distance service needs and are interested in the services of the carrier whom they are calling. Consumers placing these calls are also usually the household's or business's decision maker for selecting long distance service. By contrast, telemarketing calls may reach the wrong member of the family or business, and can catch the consumer "off-guard", thereby creating much more opportunity for misunderstandings or confusion. It is Sprint's experience that the sales rate from customer-initiated calls is approximately 20 times the sales rate for telemarketing calls.

Furthermore, there is no apparent "slamming" problem with respect to customer-initiated calls. The Common Carrier Bureau's Enforcement Division analyzed a sample of 430 "slamming" complaints and found that less than one percent of them related to customer-initiated calls. Sprint's own complaint experience corroborates that this sales channel is not a significant source of complaints. There is little

reason to believe that the malefactors that have "slammed" customers through misleading promotions and inducements in the past would begin to use customer-initiated calls to continue these practices. The Commission's decision that "slammed" customers should pay no more to the "slamming" carrier than they would have paid to their original carrier, coupled with the charges imposed by LECs for unauthorized PIC changes, should eliminate the profit incentive to build a business around slamming customers and keeping them only a month or two until they realize they have been "slammed".

Extending verification requirements to customer-initiated calls would also impose significant costs on Sprint. Sprint would incur $1.2 million in start-up costs and $8.9 million annually in recurring costs and foregone revenues at current sales volumes. These costs will either have to be absorbed by long distance carriers or be passed on to consumers in the form of higher rates. At the same time, because the verification requirement delays, by as much as 17 days, the initiation of service to a new customer, consumers who change carriers in order to obtain lower-priced services will be denied the benefits of these lower rates for that period of time.

In short, the verification requirement, as applied to sales from customer-initiated calls, is an expensive solution to a non-existent problem.

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In the Matter of Policies and Rules Concerning Unauthorized Changes in Consumers' Long Distance Carriers	))))	CC Docket No. 94-129

PETITION FOR RECONSIDERATION

Sprint Communications Co. hereby seeks reconsideration of ¶42 of the June 14, 1995 Report and Order herein (FCC 95-225), to the extent that this paragraph is intended to apply the verification requirements of §64.1100 of the Rules to PIC change orders resulting from customer-initiated calls to interexchange carriers.

It is not clear whether the Report and Order in fact requires the §64.1100 procedures to apply to PIC changes made through customer-initiated calls. Although the Report and Order amended §64.1100 in other respects (see, R&O, Appendix B), it left the scope of the rule unchanged. Thus, the rule, by its terms, applies only to orders "generated by telemarketing... ." While "telemarketing" is not defined in the Rules, the Notice of Proposed Rulemaking that led to the adoption of Section §64.1100 proposed procedures for verifying "non customer-initiated orders."[1] Furthermore, the Report and

[1] PIC Change NPRM, 6 FCC Rcd 1689, 1691 (1991).

Order that adopted the verification requirements initially described them as applying to "a PIC change order (other than a customer-initiated PIC change)... ."[2] Consequently, it is clear that the present rule does not apply to customer-initiated calls. Nonetheless, ¶42 of the Report and Order states that "we will extend PIC verification procedures to consumer-initiated calls to IXC business numbers," even though the Commission did not amend the rules to do so.

Given these ambiguities, Sprint is obliged to file this petition for reconsideration in order to protect its interests. As Sprint will explain below, there is no sound basis for extending verification requirements to sales resulting from customer-initiated calls. Customer-initiated calls are inherently different from carrier-initiated telemarketing calls and should be treated differently for purposes of safeguards against slamming. Sales from such calls have not been a significant source of "slamming" complaints in the past and there is no reason to believe that

[2] See, Policies and Rules Concerning Changing Long Distance Carriers, CC Docket No. 91-64, FCC 91-398 (released January 9, 1992), Appendix B, Confirmation Methods. The Common Carrier Bureau subsequently released an erratum (DA 92-101, released February 4, 1992) that revised Appendix B into the format of a rule -- the present §64.1100 -- to be incorporated in the Code of Federal Regulations and added an ordering paragraph to the Report and Order to adopt this amendment of the rules. There is no indication in the erratum that the Bureau intended to broaden the scope of the requirements adopted by the Commission, and indeed, the Bureau is without authority to do so.

they will be in the future. Having to comply with verification requirements will impose substantial additional costs on Sprint and on its customers to solve a problem that simply does not exist.[3]

I. CUSTOMER-INITIATED CALLS ARE A MAJOR SOURCE OF NEW CUSTOMERS FOR SPRINT AND DISPLAY SUBSTANTIALLY DIFFERENT CHARACTERISTICS FROM TELEMARKETING SALES

Sprint and its competitors collectively spend tens of millions of dollars every month on television commercials and print advertisements in an effort to attract new customers. These commercials and advertisements include an 800 number that consumers can call to subscribe to the service. Sprint and its competitors rely on the use of these 800 numbers as a convenient means of allowing consumers to order their

[3] To the extent that this Petition for Reconsideration contains factual material that was not included in Sprint's previous filings in this docket, Sprint submits that consideration of these facts is required in the public interest. The issue of applying verification rules to customer-initiated calls was discussed only briefly in the NPRM in this docket (9 FCC Rcd 6885, 6888 (1994)), and the NPRM offered no substantial grounds for proposing to apply verification rules to customer-initiated calls. Sprint did allege, in its initial comments and without contradiction by any other party in reply comments, the broad outlines of the arguments that are accompanied in this petition by more detailed factual showings: that there is no "slamming" problem with respect to customer-initiated calls and that applying the verification requirements would impose substantial costs on Sprint (and other long distance carriers). Given the absence of any fact-based challenge to those contentions and the essentially peripheral nature of that issue to the central purpose of the NPRM, Sprint (and, apparently, the many other parties that opposed restricting use of customer-initiated calls) did not believe it was necessary to make more detailed factual presentations at that time.

services, just as airlines, hotel chains, car rental companies, catalogue companies and many other types of businesses utilize 800 services to allow consumers to make reservations, purchase tickets, and order and pay for merchandise.

For Sprint, such customer-initiated calls are a key source of new customers. Thus far in 1995, customer-initiated calls to these 800 numbers account for the largest single source of sales to Sprint, other than customers who place their PIC change orders direct with a LEC, and account for roughly 1-1/2 times as many PIC change orders as Sprint obtains from telemarketing.

By their very nature, customer-initiated calls are far different from telemarketing calls. Customers are calling Sprint's 800 numbers because they choose to do so, and when they make such calls, they are focused on their choice of a long distance carrier and are interested in the services offered by Sprint. The consumers who place these calls tend to be the decisionmakers with respect to the choice of a long distance carrier for their homes or businesses. By contrast, in the case of telemarketing, the person receiving the call may not be the family member or business employee responsible for choosing the long distance carrier, is almost always caught "off-guard" in the sense that the call is placed at the time of the telemarketer's choosing rather than the consumer's choosing,[4] and may well not have any inclination whatsoever to change long distance service.

Because of these differences, there is inherently less opportunity for misunderstanding or confusion during the course of a customer-initiated call than in the case of a telemarketing call. In the former, the consumer is interested in the carrier he or she has called, is focused on long distance service and is usually the party authorized to make a change in long distance service; whereas in the case of telemarketing, the person receiving the call may not be fully "clued in" to the nature of the call and may not be the proper party to authorize a change of carriers in any event. The Report and Order, in finding that there is little difference between these two types of calls, fails to recognize these important differences between customer-initiated calls and telemarketing calls.

Paragraph 42 also states, without citation to any evidentiary support in the record:

> Typically, the consumers, in response to an advertisement, are just requesting general information about the IXC and do not intend to initiate a PIC change.

This language suggests that it is atypical for a consumer to call in response to an advertisement and request a PIC change.

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[4] Only on rare occasions (if ever) would the consumer receiving a telemarketing call happen to be thinking about his or her choice of a long distance carrier at the time the phone rings.

That is not Sprint's experience. Although results vary from one advertisement to another, between 40 and 60 percent of all customer-initiated calls to Sprint result in a sale. Therefore, it is just as "typical" for a consumer calling Sprint to order a PIC change as it is to merely request information. In contrast, only 2 to 3 percent of telemarketing calls produce sales. Thus, the sales rate from customer-initiated calls is approximately twenty times the sales rate on telemarketing calls. This is further evidence of the significant differences between sales from customer-initiated calls and sales from telemarketing calls.

II. APPLYING VERIFICATION REQUIREMENTS TO SALES FROM CUSTOMER-INITIATED CALLS IS AN EXPENSIVE SOLUTION TO A NON-EXISTENT PROBLEM

There is no evidence in the record to show that a "slamming" problem exists with respect to unauthorized PIC changes resulting from customer-initiated calls. In its January 9, 1995 Comments herein, Sprint noted (at 15-16) that the NPRM failed to cite any evidence that this sales channel is causing harm to consumers and urged the Commission, if it had any evidence to the contrary, to issue a further notice to allow interested carriers an opportunity to address that evidence. Nonetheless, in deciding to impose verification requirements on such sales, the Report and Order again cited no evidence that the Commission has received a significant number of complaints stemming from sales made through customer-initiated calls.

In fact, the evidence available to the Commission at the time it adopted the Report and Order shows that the contrary is the case. In response to an FOIA request submitted by AT&T, the Common Carrier Bureau's Enforcement Division examined a sample of 430 complaints concerning alleged unauthorized or deceptive changes of long distance carriers. Only four of these complaints -- less than one percent -- were related to changes resulting from calls to 800 numbers.[5]

Sprint's own "executive complaint"[6] data corroborate the lack of a problem. From January 1, 1995 through July 25, 1995, Sprint received 372 executive complaints relating to alleged unauthorized PIC changes.[7] Of these, only 30 can be tied in any way with customer-initiated calls (only one of which was addressed to the Commission). To put this in perspective, less than one in every 20,000 sales made through this channel resulted in an executive complaint. The

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[5] The results of the Commission's study are appended as Exhibit 6 to an AT&T ex parte presentation in this proceeding dated June 8, 1995.

[6] Within Sprint, "executive complaints" denote complaints submitted in writing or by phone to senior executives of Sprint and complaints referred to Sprint by federal and state regulatory commissions or by state attorneys general.

[7] In presenting these data, Sprint has not attempted to determine which complaints are meritorious and which are not. Indeed, nearly half of the complaints related to resellers, rather than to Sprint.

incidence of complaints (i.e., the ratio of complaints to sales) from PIC change orders received from LECs was more than twice as high. The Commission has never proposed to require LECs to independently verify the PIC change orders they receive, and Sprint is not suggesting that it do so. However, Sprint's data show that PIC changes from customer-initiated calls are less of a problem than LEC-initiated PIC changes.

Weighed against the fact that there is no evidence of a significant problem of unauthorized PIC changes resulting from customer-initiated calls, the cost of the Commission's remedy to this non-existent problem -- imposition of the verification requirements in §64.1100 -- will be significant, both for long distance carriers and their customers. There are two basic types of costs that fall on long distance carriers as a result of the verification requirements: the direct cost of verification, and the foregone revenues that result from lost accounts or delays in connecting customers to their new carrier's network. Both the direct costs of verification and the foregone revenues have the effect of making it more expensive for a long distance carrier to acquire new customers. These costs, which for Sprint would exceed $10 million in the first year alone, are discussed in more detail at 12-13, below.

Consumers will be hurt in two ways from the Commission's action. First, to the extent that the long distance industry faces higher customer acquisition costs, as discussed above, these higher costs may be passed on to long distance consumers in the form of higher rates if competitive circumstances permit. Second, those consumers who wish to change carriers often do so because they can obtain service at a lower rate from the new carrier. Delays in activating these new accounts as a result of the verification requirement will deprive consumers of these savings during the longer activation period.

More broadly, competition will also suffer. Extending the verification requirement to customer-initiated calls will make the process of changing carriers that much more cumbersome and time-consuming. Every added step in the sales process is a "turn-off" to consumers that may cause them to change their minds about switching carriers. This clearly happens today with respect to verification of telemarketing sales. Sprint tracks the reasons for sales that are lost in the verification process. Based on data for April-June 1995, roughly 53 percent of sales that are "unconfirmed" in the verification process are the result of customers changing their minds. Sprint does not quarrel with the Commission's decision to impose verification requirements on telemarketing sales at a time when there were clearly significant consumer concerns with respect to the industry's telemarketing practices. However, to extend these requirements to customer-initiated calls, with no demonstrated problem to solve, is simply over-regulation.

This added step of verification will also create a contrast between long distance service and the countless other goods and services that can be ordered over the phone. When consumers order merchandise, plane tickets or concert tickets by phone, they expect their order to be processed without delay. They do not expect the vendor to sit on their order until a follow-up phone call is made or a written confirmation package is sent out. Imposing verification requirements on customer-initiated calls to long distance carriers inevitably adds confusion and uncertainty to what is otherwise a familiar process to consumers. This tends to discourage consumers from changing carriers and to freeze the existing market shares. In this regard, the Commission may wish to take judicial notice of the fact that the Federal Trade Commission, in its most recent proposed rules on telemarketing practices, exempts customer-initiated calls of the sort at issue here. See, p. 71 of the FTC's NPRM appended to AT&T's June 9, 1995 ex parte letter in this docket.

In the case of Sprint, the costs of complying with the verification requirement for customer-initiated calls would amount to millions of dollars annually. In order to place the cost estimates in context, it may be useful to describe briefly the verification process Sprint utilizes on telemarketing calls.

The preferred method of verification is an on-line transfer, at the end of the telemarketing call, to the third party verification firm. That is the quickest and most convenient means of obtaining the necessary verification of the sale. When that is not possible, either because all of the third party verification lines are busy or the customer cannot or does not wish to prolong the telephone conversation, the customer information is provided to the third party verification firm, which then tries to call the customer back. If, within three business days of the date of the sale, the third party verification firm is unable to reach the consumer, then the mailing described in §64.1100(d) is sent to the customer. In those cases, Sprint must wait a total of 17 days from the initial sale to place the PIC change order. Overall, the average time lag for initiating the PIC change is approximately 1.5 days after the sale is made. In addition, as discussed above, during the verification process, some customers express second thoughts and change their mind about their desire to switch to Sprint. This accounts for approximately 3.3% of sales.

In developing the cost estimates, Sprint has assumed that verification of customer-initiated calls will follow the same pattern described above for carrier-initiated telemarketing.

Sprint believes this is a conservative assumption in view of the fact that many customer-initiated calls are placed in response to television advertisements. Such responses tend to create a "spike" in the calling patterns for customer-initiated calls -- i.e., consumers call right after the commercial is aired. This peaking of customer-initiated calls makes it more likely that customers cannot be transferred on-line to the third party verification vendor, since the third party verification firm cannot staff up just to handle a peak of a few minutes' duration. Thus, a somewhat larger percentage of customers will have to be called back or be sent the welcome package through the mail than would be the case with telemarketing sales, and the lost revenue from the delay in activating new accounts will be greater than it is in the case of telemarketing, where sales calls are spaced more evenly.

Overall, based on year-to-date sales volumes from customer-initiated calls, Sprint estimates that the one-time start-up costs of employing §64.1100 procedures for these sales would amount to $1.2 million, that the annual recurring costs would total $2.5 million, and that foregone revenue from lost sales (in cases where customers change their minds about switching carriers) or delayed activation of new accounts would total $6.4 million annually. The start-up costs include $0.5 million in network equipment for Sprint and $0.7 million for setting up the additional workstations that would be required by the third-party verification firms (costs that those firms would charge back to Sprint). The annual recurring expenses include labor and network costs for third-party verification calls as well as costs for the extra time needed for the personnel handling the customer-initiated calls to explain the verification process to new customers. The foregone revenue is composed of $4.9 million in lost sales and $1.5 million from delayed activation. Thus, in total, the new verification requirements will impose on Sprint first-year additional costs of $10.1 million, and $8.9 million annually thereafter.

III. THE COMMISSION'S REASONS FOR ADOPTING THE VERIFICATION REQUIREMENT FOR CUSTOMER-INITIATED CALLS DO NOT WITHSTAND ANALYSIS

The reasons given in the Report and Order for applying the verification requirements to customer-initiated calls were based more on supposition than fact. As shown above, the supposition that customer-initiated calls are "typically" requests for information, and the necessary implication that customer-initiated calls only atypically result in a request to change carriers, is demonstrably false based on Sprint's experience. In addition, Sprint has demonstrated that contrary to the Commission's assumption, customer-initiated calls are not "like" telemarketing calls; instead they have markedly different characteristics and they result in a PIC change order roughly 20 times as often as is the case for telemarketing calls.

The other reasons given by the Commission in ¶42 for adopting the requirement also do not withstand analysis. First, the support among commenting parties for restrictions on sales through customer-initiated calls was not nearly as broad as the Report and Order suggested (see, n.84 and related text). Contrary to the Commission's characterization of the record, there was no affirmative support among either IXCs or local telephone companies for these restrictions. The only IXC mentioned by the Commission -- Touch 1 -- clearly opposed any restrictions on customer-initiated calls. See, Touch 1 Comments at 8 ("Touch 1 also opposes limitations on a carrier['s] use of "800" numbers as a marketing device"). Touch 1 mentioned imposition of the verification requirement as a fall-back, second-best solution only if the Commission was determined to take some form of restrictive action (id.). The only local exchange carrier cited by the Commission as supporting the verification requirement -- GTE -- said nothing of the sort. GTE endorsed customer-initiated calls as a sales channel (Comments at 5):

> An IXC provided 800 number makes it easy for customers to get the details they need to make an informed decision and conveniently make a PIC change if they so choose.

Nothing in GTE's comments suggested that verification requirements should apply to such PIC changes. By contrast, a number of long distance carriers, large and small, opposed restrictions on the use of customer-initiated calls as a sales channel. See, e.g., the comments of AT&T at 22-23; General Communication, Inc. at 6; LDDS at 6; Lexicom at 4-6; MCI at 14; and MIDCOM at 11;[8] and One Call Communications at 12-13. In addition to these IXCs, both GTE (as noted above) and NYNEX (at 4) saw no need to restrict the use of 800 marketing by IXCs.

Finally, the Commission expressed agreement with a concern, in Consumer Action's comments, that the IXCs that had been engaging in the misleading and deceptive "sweepstakes" promotions using direct mail, which were prohibited in the Report and Order, would instead begin to employ deceptive tactics in customer-initiated calling as a means of slamming. Sprint believes this speculative concern is unfounded. The "bad actors" that have slammed customers as a business strategy have tended to charge rates that are much higher than those of established carriers. See, "*Stealing of Customers Spreads With Resellers of Telephone Service*", Wall Street

[8] MIDCOM, like Touch 1, flatly opposed restrictions on the use of customer-initiated calls to 800 numbers as a marketing device, and mentioned the application of verification requirements only as a backup position in the event the Commission was determined to impose some restrictions on such marketing.

Journal, July 26, 1995, at A1, A6. The Report and Order has eliminated this "hit and run" strategy by requiring slamming carriers to charge no more than the customer would have paid to its previous carrier. This action, together with the LEC-imposed charges for unauthorized PIC changes (which are typically in the range of $20) takes the profit away from the malefactors who in the past have sought to build a business around slamming customers and overcharging them for the month or two it can take a consumer to realize that he or she has been slammed.

As a result, Sprint believes the chances are small that the bad actors that were the primary focus of the Report and Order would shift their activities to the customer-initiated call sales channel instead. And even if they were to do so, there is no assurance that such entities would comply with the Commission's verification requirements. As a result, the only effect of the Commission's rules could well be to penalize legitimate carriers with higher costs while not effectively curbing abusive practices. In the Wall Street Journal article cited above, Chairman Hundt was quoted (at A6) as saying that the FCC will "fine the heck out of" slamming carriers. Ultimately, that course of action is the only effective one, and is far preferable to imposing additional costs on legitimate carriers -- and their customers -- to solve a problem that, for them, does not exist.

IV. CONCLUSION

In view of the foregoing, Sprint respectfully requests the Commission to eliminate any requirement that may have been imposed in the Report and Order to apply to §64.1100 procedures to PIC changes resulting from customer-initiated calls.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Joan A. Hesler, hereby certify that on this 9th day of August, 1995, a true copy of the foregoing document was sent via First Class Mail, Postage Prepaid or Hand Delivered to each of the parties listed below.

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